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April 15, 2003

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Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

RE: Ex Parte Presentation; In the Matter of Digital Broadcast Copy
Protection; MB Docket No. 02-230

Dear Ms. Dortch:

This is to notify the Office of the Secretary that on April 15, 2003 representatives Jack Valenti and Fritz Attaway of the Motion Picture Association of America made an ex parte presentation to Commissioner Adelstein and his staff member Johanna Mikes.

The presentation addressed material submitted to the FCC in the Joint Comments of the Motion Picture Association of America, et al. in this proceeding on December 6, 2002, and Reply comments submitted on February 20, 2003. A summary of the presentation is attached.

In accordance with Section 1.1206 of the Federal Communications Commission rules, this original and one copy are provided to your office. A copy of this notice is being delivered to the parties mentioned above.

Sincerely,

ENCLOSURE

BROADCAST FLAG TALKING POINTS

The Flag is a NARROW solution to prevent mass REDISTRIBUTION of DTV content. The Flag will NOT prevent copying, including multiple copying and even serial copying. The Flag is designed to stop one and only one thing: the mass redistribution of DTV programs over digital networks.

The Flag is necessary to protect the public interest in free, over-the-air broadcasting. It is an unassailed FACT that cable, satellite and other conditional access delivery systems can protect programming from mass redistribution. Without the Flag, free broadcasting will be at a competitive disadvantage. Program suppliers rely on "aftermarkets," like syndication, foreign distribution and home video sales. As a general rule, TV license fees alone do not cover the cost of production. Cable and satellite services, because they operate through conditional access systems, can offer program suppliers technological protections against Internet redistribution of their programs, which destroys these aftermarkets. Over-the-air broadcasters cannot do this. In order to provide a level playing field, the FCC must implement the broadcast flag. There is evidence in the record before the FCC that some program distributors will not license high value HDTV programs to free broadcasters if the Flag is not implemented by the FCC.

A Broadcast Flag regulation will not impose additional costs on consumers or additional burdens on equipment manufacturers. Virtually all TV equipment will contain protected inputs and outputs in order to render protected content purchased or rented on pre-recorded media (DVDs), and delivered by cable and satellite services (VOD, PPV). Implementation of the Flag will merely require flagged broadcast programming to be directed to these preexisting protected inputs and outputs. For these devices, the Flag will require no additional cost or circuitry.

Encryption at the source is not a better alternative. Encryption at the source would impose unacceptable consumer costs. Every legacy digital AND analog TV set owner would have to purchase decryption equipment. The cost and inconvenience of that is a consumer non-starter. The Flag imposes virtually no burdens on consumers, either in terms of cost or functionality.

The Flag will NOT interfere with Fair Use. The Broadcast Flag will not prevent copying of any kind, or thwart any activity the typical consumer engages in today. Some have speculated that the Flag will prevent fair use activities like e-mailing excerpts of programs. This is true today because there is no secure way to send content over digital networks. We are confident that that such secure digital network delivery will be possible in the future and we welcome that development. There is no problem with regard to personal photos or home videos, which would not contain the broadcast flag. This material could be e-mailed, posted on websites or otherwise distributed without restriction.

MPAA has proposed objective standards for acceptable (e.g. "Table A") Broadcast Flag implementations. We have proposed objective standards -- use or approval by at least three studios or networks, or "at least as effective" as an identifiable benchmark technology. These standards will ensure that the technologies adopted to protect cable and satellite programming will be approved for purposes of implementing the Flag. They are objective and easy to administer -- in fact, more objective and more easy to administer than any other standard that has been suggested. The wrong "objective standards" could create a technological straightjacket that discourages innovation. The FCC should leave as much room as possible for new, and improved, Broadcast Flag implementation options. That said, we are not completely wedded to the Table A approach we have proposed. We are open to any proposals that offer consumer benefits without reducing the effectiveness of the Flag.

This proceeding should NOT be held in abeyance until there is complete consensus among all affected industries. Delay for a

privately negotiated solution is unnecessary because all parties interested in negotiating have already done so. Prompt action is required to save broadcast television. Any delay allows manufacturers to increase the number of non-compliant legacy products in the market by the time the Flag regulation goes into effect, thus reducing its effectiveness. As the number of DTV receivers and broadband connections increases, they will reach a "tipping point" beyond which it will not be economically rational to release unprotected content over broadcast DTV.

Adoption of a Broadcast Flag mandate is within the FCC's jurisdiction. The FCC has been involved in preventing the redistribution of broadcast programming for over thirty years. In the 1960s and 70s the Commission adopted cable signal carriage restrictions and syndicated exclusivity rules to protect the supply of quality programming to free, off-air TV. These regulations were approved by the courts. The same issues are at play here, and the FCC has ample jurisdiction to implement the Broadcast Flag. The Chairmen of the House and Senate FCC oversight committees have informed the Commission that, in their view, adoption of a Broadcast Flag regulation is within its jurisdiction and in the public interest.